

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT
of ARM 17.50.401, 17.50.402,)
17.50.403, 17.50.410,)
17.50.411, 17.50.412 and) (SOLID WASTE)
17.50.416 pertaining to solid)
waste fees)

TO: All Concerned Persons

1. On August 14, 2003, the Board of Environmental Review published MAR Notice No. 17-197 regarding a notice of public hearing on the proposed amendment of the above-stated rules at page 1720, 2003 Montana Administrative Register, issue number 15.

2. The Board has amended ARM 17.50.401, 17.50.402, 17.50.411, 17.50.412 and 17.50.416 exactly as proposed. The Board has amended ARM 17.50.403 and 17.50.410 as proposed, but with the following changes, deleted matter interlined, new matter underlined:

17.50.403 DEFINITIONS Unless the context requires otherwise, in this subchapter the following definitions apply:

(1) through (12) remain as proposed.

(13) "Interim closure" means the period of time from the ~~final receipt of waste at the solid waste management facility~~ department's receipt of the certification required in ARM 17.50.530(1)(h) until the department approves verifies closure compliance under ARM 17.50.530.

(14) through (30) remain as proposed.

(31) "One-time household hazardous waste collection event" means a collection of household hazardous waste from the public ~~on a one-time basis with a frequency no greater than annually at any given location.~~

(32) through (54) remain as proposed.

17.50.410 ANNUAL OPERATING LICENSE REQUIRED (1) through (6)(c) remain as proposed.

(7) Fees at a facility in interim closure must be held in abeyance by the department. If the department determines, pursuant to ARM 17.50.530, that closure was not completed in compliance with the closure plan, the owner or operator shall pay the fees held in abeyance to the department. An owner or operator of a facility determined by the department not to have completed closure in compliance with the facility's closure plan shall, after the owner or operator believes that closure has been completed in compliance with the closure plan, submit a new certification as required in ARM 17.50.530(1)(h). The facility is then again in interim closure, pending re-inspection and verification of closure compliance by the department. ~~Fees held in abeyance are due~~

~~and payable to the department if the facility does not complete closure in the times specified in Title 17, chapter 50, sub chapter 5, MCA.~~

3. The following comments were received and appear with the Board's responses:

COMMENT NO. 1: One commentor noted that there was no time frame for the definition of "one-time household hazardous waste collection event" in ARM 17.50.403(31).

RESPONSE: The definition in (31) is provided to define a waste management practice for which the Department will not charge a fee. See ARM 17.50.410(6). These events are often held on an annual basis in major Montana cities and last for only one or two days. Therefore the Board agrees with the comment and has amended the definition to specify that, to qualify for the license fee waiver, these events may be no more frequent than annual at any given location.

COMMENT NO. 2: Two commentors thought, based on their experience, that the weights of a cubic yard of uncompacted and compacted wastes listed in ARM 17.50.411(3) were too high.

RESPONSE: The Department assesses a fee based on the number of tons of waste disposed of at a facility. If a facility does not weigh incoming waste, the facility is allowed to estimate the weight based on the volume of the waste. ARM 17.50.411(3) provides the conversion factors to be used in the estimates. They are 300 pounds/cubic yard for uncompacted waste and 700 pounds/cubic yard for compacted waste. They were retained from the previous version of the rule and were based on testimony before the 1991 Legislature when the volume-based fees were authorized and were incorporated in the Statement of Intent for SB 209 of that legislative session (Ch. 643, Laws of 1991). The Solid Waste Association of North America (SWANA) cites the following typical densities in its Manager of Landfill Operations course manual (2000) at page I-13:

<u>Source</u>	<u>Density, lb/cubic yard</u>
Residential Waste (uncompacted at curb)	Average 250
Commercial/Industrial Waste(uncompacted)	Average 500
Municipal Solid Waste (compacted in truck)	Average 750

Since the fee rule does not make a distinction between household and commercial/industrial wastes because both types of wastes are handled at Montana landfills, the average of 300 pounds/cubic yard for uncompacted waste is a reasonable estimate given that most waste is from residential sources, and is consistent with national averages. The density of 700 pounds/cubic yard for compacted waste is also in line with national averages.

Therefore, the Board declines to make a change to the proposed rule.

COMMENT NO. 3: One commentor requested that the Board consider the impact of these fees on small rural Montana communities.

RESPONSE: The proposed fees were developed with the help of the Solid Waste Advisory Committee, an advisory committee to the Department of Environmental Quality voluntarily established by members of the regulated community and the Department to enhance interaction between solid waste program staff and the regulated community. The committee includes representation from all types of facilities in Montana, both urban and rural. The fees proposed were established with significant input from the Advisory Committee members and seemed reasonable to the Committee members and the Board and represent only a small percentage of the cost of waste management. For example an Intermediate Class II landfill that receives 10,000 tons of waste annually would pay \$0.76 per ton to the Department when tonnage and annual fees are taken into account, with operating costs of about \$30.00 per ton. (SWANA Manager of Landfill Operations course manual (2000), page XI-11.) Fees would therefore make up 2.5% of operating costs. A Major Class II facility receiving 200,000 tons per year would pay \$0.42 per ton to the Department when tonnage and annual fees are taken into account and have operating costs of about \$13.00 per ton. (SWANA, op. cit.) Fees would therefore make up 3.2% of operating costs.

As stated in the initial notice, the fees charged by the Department for solid waste disposal have not changed since 1991, and inflation has increased costs of licensing and regulation. The Board believes that the Department needs additional funding to adequately perform its regulatory duties, and believes that the proposed fees are an appropriate and reasonable way to provide that funding.

Therefore, the Board believes that it has taken into consideration the costs of the proposed fees to all Montanans, and declines to change the proposed fees.

COMMENT NO. 4: Department staff noticed and commented that there is a conflict between ARM 17.50.530(1)(h) and the definition of "interim closure" in proposed ARM 17.50.403(13) and the holding of fees in abeyance during interim closure in proposed ARM 17.50.410(7). The Department commented that the definition of interim closure in ARM 17.50.403(13) and the section on holding fees in abeyance during interim closure in ARM 17.50.410(7) should be modified to be consistent with the closure requirement in ARM 17.50.530(1)(h). The Department also suggested an amendment to ARM 17.50.410(7) to address fees if the Department finds that a landfill was not closed as required by its closure plan.

RESPONSE: The proposed definition in ARM 17.50.403(13) would have defined interim closure as starting at the time a landfill stops accepting waste, and the proposed addition of ARM 17.50.410(7) would have required the Department to hold annual landfill fees in abeyance during interim closure.

ARM 17.50.530(1)(h), which is a Department rule not being amended in this rulemaking, states that, after the owner or operator has notified the Department that "closure has been completed in accordance with the closure plan," ... "the department ... will (i) place the landfill in interim closure status and hold in abeyance any fees due under ARM 17.50.410 until closure compliance is verified by the department"

Therefore, under the existing ARM 17.50.530(1)(h), interim closure status starts, and fees are held in abeyance, after an owner or operator notifies the Department that closure has been completed, but under the proposed additions to ARM 17.50.403(13) and 17.50.410(7), interim closure status and the holding of fees in abeyance would begin as soon as the facility stops accepting waste.

As a result, the proposed rule amendments in ARM 17.50.403(13) and 17.50.410(7) would have been inconsistent with the existing requirements in ARM 17.50.530(1)(h).

The Department wishes to retain the approach in the existing rules, and the Board agrees with the Department. Requiring a landfill owner or operator to pay fees until it completes closure according to the closure plan gives the owner or operator a financial incentive to complete closure quickly, within the 180 days required by ARM 17.50.530. Closure within 180 days helps protect public health and the environment by making sure that a cap (cover) is placed over waste to minimize infiltration of water into the waste, which in turn minimizes the production of leachate with harmful chemicals that can contaminate ground water. Also, until a landfill has completed closure according to the plan, the Department is required to inspect and review the landfill and inspects the closure work. The Department, therefore incurs expenses, and it is reasonable to require the landfill's owner or operator to pay fees during that time.

The Department proposed language that would make the fees held in abeyance due if it finds that closure was not completed in accordance with the closure plan. Then, when the owner or operator completes the work and again certifies to the Department that closure is complete, future fees would again be held in abeyance until the Department has verified that closure was completed according to the plan.

The Board has amended ARM 17.50.403(13) and 17.50.410(7) to be consistent with ARM 17.50.530(1)(h).

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

DAVID RUSOFF
Rule Reviewer

By:

JOSEPH W. RUSSELL, M.P.H.
Chairman

Certified to the Secretary of State, _____, 2003.